

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DARREN MOORE,

Plaintiff,

vs.

Case No.: 2-10-cv-11824

Honorable: Stephen J. Murphy, III

Magistrate Judge: Mona K. Majzoub

LIEUTENANT E. JONES, POLICE OFFICER
JANOSKEY, POLICE OFFICER COLON,
POLICE OFFICER S. SALISBURY, CITY OF
DETROIT POLICE DEPARTMENT and CITY
OF DETROIT,

Defendants.

DAVID B. TRIVAX (P-38798)
Serlin Trivax & Stearn, PLLC
Attorney for Plaintiff
31780 Telegraph Road, Suite 120
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MARION R. JENKINS (P-26257)
Assistant Corporation Counsel
Attorney for Defendant City of Detroit
660 Woodward Avenue
1650 First National Building
Detroit, MI 48226
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MOTION FOR SUMMARY JUDGMENT

NOW COMES Defendant, City of Detroit Police Department, by and through its undersigned attorneys and for its First Response Pleading moves this Court for Summary Judgment pursuant to FRCP 12 and FRCP 56, saying as follows:

1. That on April 13, 2010 Plaintiff, Darren Moore, filed his Complaint in the Wayne County Circuit Court.
2. That the Complaint was served upon the City of Detroit Law Department on April 22, 2010 and then timely removed to this Court.
3. That in his Complaint Plaintiff names the City of Detroit Police Department as a

party Defendant.

4. That the Detroit Police Department is not an entity amenable to suit.

5. That this Motion for Summary Judgment raises only issues of law for which discovery is unnecessary.

WHEREFORE, predicated upon the facts presented and the authorities cited above, Defendant City of Detroit Police Department respectfully request that this Court grant its Motion for Summary Judgment and dismiss it from this action in its entirety, with prejudice, and with costs and reasonable attorneys fees.

Respectfully submitted,

/s/ Marion R. Jenkins

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Attorney for Defendant City of Detroit
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(P-26257)

Dated: May 7, 2010

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BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

FACTS

This motion is based on Plaintiff's Complaint. According to that Complaint, Plaintiff alleges that on October 12, 2008 he was driving along a city street when he heard noises coming from the trunk of his vehicle. He stopped his vehicle to investigate the noises and while looking into the trunk several police officers approached him. The officers allegedly assaulted him, called him nasty names and handcuffed him. This alleged assault ended when the officers decided to pursue someone else for urinating in public. The officers then abruptly released Mr. Moore and left the scene. Mr. Moore

claims that one of the officers has a “personal relationship” with Plaintiff’s ex-wife.

In his fifty-six count Complaint, Plaintiff alleges a variety of tort claims but implicates the City of Detroit Police Department in only one paragraph. In that paragraph, Plaintiff alleges that the Detroit Police Department condoned the officers actions through its de facto policy of deliberate indifference.

ARGUMENT

The City of Detroit Police Department is not a municipal corporate agency or entity. MCLA 691.1401. A governmental agency is defined as the state, its political subdivisions and municipal corporations. MCLA 691.1401 (d). A municipal corporation is further defined as any city, village, township or charter township. MCLA 691.1407 (a) and Public Act No. 175 (1986).

The City of Detroit Police Department is an operational subdivision of the City of Detroit. As such it is not amenable to suit. O’Leary v. Marquette Board of Fire and Water Commissioners, 79 Mich 281, 44 NW 608 (1890); McPherson v. Fitzpatrick, 63 Mich App 461, 234 NW2d 566 (1975).

CONCLUSION/RELIEF REQUESTED

Based on the claims alleged and the authorities cited, the City of Detroit Police Department is not a legal entity capable of being sued. The City of Detroit Police Department must be dismissed from this matter.

WHEREFORE, Defendant, City of Detroit Police Department, respectfully request that its motion be granted and that it be dismissed from this matter, with prejudice and with costs and reasonable attorney fees.

Respectfully submitted,

/s/ Marion R. Jenkins

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Attorney for Defendant City of Detroit
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(313) 237-3032
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(P-26257)

Dated: May 7, 2010

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

David B. Trivax
Serlin Trivax & Stearn, PLLC
31780 Telegraph Road, Suite 120
Bingham Farms, MI 48025

and hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants(s):

None.

/s/ Marion R. Jenkins

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